

## **REMARKS**

In view of the foregoing amendments and the following remarks, reconsideration and allowance of this patent application is earnestly solicited. Claims 1, 18, 33, 50 and 65 have been amended herein to clarify the claimed invention. Claims 3, 22, 35 and 54 have been canceled without prejudice. Claims 1, 18, 33, 50 and 65 are the independent claims. Favorable reconsideration is requested.

### **Rejections Under 35 U.S.C. §101**

Applicants have addressed the rejection of claims 1-32 under 35 U.S.C. §101 in the Prior Response.

### **Rejections Under 35 U.S.C. §103(a)**

Claims 1-43, 46-48, 50 and 53-69 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent Application Publication No. U.S. 2003/0078864 A1 to Hardesty et al. ("Hardesty") variously in view of: (i) U.S. Patent No. 5,774,870 to Storey ("Storey"), and (ii) the webpage "PNC BANK: The Thinking Behind The Money" as it apparently appeared on PNC Bank's website in December 2002. The Examiner also cites an article that apparently appeared on the website *www.frugalmarketing.com* in April 2002, for the general and non-controversial proposition that loyalty programs are generally known. For the reasons set forth below, Applicant traverses these claim rejections.

As noted in the Prior Response, the present invention is directed to embodiments of a system, method and computer program product for enhancing the value of a credit card (or other payment product) to a credit card holder and encouraging increased use of the credit card as a payment device by rewarding the card holder based not only on the amounts of qualifying purchases but rather on the

travel distance(s) associated with the purchase of travel tickets or travel passes made using the credit card. Qualifying transaction information and the data from which such travel distance (e.g., miles traveled) can be determined are used to calculate the appropriate number of points earned by the card holder. A qualifying transaction is one in which travel is purchased on any of a set of authorized travel modes (e.g., air, boat, train, vehicle, bus, etc.). In this way travel in general (and not one carrier, or one mode of travel) is incentivized and promoted by the credit card.

In accordance with certain embodiments of the present invention, Level 3 Data can be utilized in the calculation of miles traveled. As noted, importantly, rewards redeemed by the credit card holder are not tied to a particular provider of goods or services - such as one specific airline, busline or cruise ship line -- or even to a given specific mode of travel (e.g., airline, cruise-ship, bus, train or vehicle). Rather, rewards are based simply on the purchase of tickets or travel passes for any of various authorized modes of travel. Once a given mode of travel is authorized, tickets or passes for any carrier within that mode is rewarded. Critically, the reward is not based on a dollar amount spent on such purchase, but simply on the travel miles associated with the ticket or pass purchased.

Because point of sale data for travel tickets or travel passes does not generally contain the travel distance associated with such ticket or pass, external data, such as Level 3 data, is required for the credit card rewards program to calculate it.

Applicant, having invented such a new, unique and non-obvious system, method and computer program product, is therefore entitled to appropriate patent protection for the invention and contribution to the art. As noted in the telephonic interview held on December 1, 2009, the claimed invention is a non-intuitive innovative system and method, which reflects the inventive insight of the Applicant.

In contrast, Hardesty, the principal reference cited, is concerned with the **form** – *not the basis of eligibility* -- of reward payments to credit card users, namely, payments to trust fund accounts to encourage savings. The underlying basis for the rewards, however, is nothing more than the conventional qualifying purchase – and not travel miles calculated from and associated with a qualifying purchase, where said qualifying purchase involves a ticket of pass for travel. Thus, Hardesty neither describes, teaches or even suggests rewarding the holder of a credit card or the like based not on the dollar value of qualifying purchases **but on travel miles associated with the qualifying purchases.** Hardesty does not even incentivize savings in the same manner that the claimed invention incentivizes travel. Hardesty does not grant a reward based on how many investments or savings bonds, CDs or other financial instruments are purchased using the card. It grants a reward based on dollar amounts of purchases – for anything. Hardesty simply pays whatever reward those general purchases earn into a trust fund account. The gross values of actual credit card rewards are orders of magnitude smaller than the gross values a user can spend on travel tickets. It is thus hard to see how Hardesty actually incentivizes anything, beyond the level of a gimmick. Thus, Hardesty certainly does not teach or suggest rewarding the holder of a credit card or the like based **on travel miles associated with the qualifying purchases, where qualifying purchases include multiple modes of travel.**

Hardesty involves a conventional dollar amount of purchases based reward program involving a newfangled (and somewhat gimmicky, at that) form of delivering the reward.

The claimed invention innovates at the level of qualifying purchases itself. The claimed invention incentivizes travel - multimodal travel – measured in travel distance, and not how much is spent on travel, or what dollar amount is spent on anything else, for that matter. Thus, as to this portion of the reward, a user who obtains a good deal on a travel ticket is not penalized for his

savvy shopping or shrewd bargaining. His travel distance reward, albeit more cheaply obtained, is incentivized the same way as any other user's travel itinerary covering the same overall distance.

Thus, Applicant urges that none of the cited prior art teaches rewards based on the travel miles associated with qualifying travel tickets or travel passes purchased. Because it incentivizes travel itself, and not travel of a specific type (e.g., air travel) or of a specific provider within a specific type (e.g., American Airlines), the claimed invention is most certainly **not a frequent flyer program**; any purchase of any travel ticket in an authorized mode of travel qualifies. Nor is the claimed invention a standard rewards based on dollar amounts of purchases, as **only travel purchases qualify, and the rewards are a function of the miles (not the dollars) associated with such purchases**.

Thus the claimed invention is asserted as patentable over Hardesty. Additionally, neither the Storey nor PNC Bank references cited by the Examiner in combination with Hardesty overcome the deficiencies of Hardesty discussed above.

Storey is directed to an electronic system for effecting the redemption of rewards for conventional frequency award programs (e.g., frequent flyer programs). The Examiner relies on Storey for its general mention of conventional frequency award programs in the *Background of the Invention* section of the Storey specification. However, what the Examiner fails to appreciate is that the frequency award programs with which Storey is concerned do not translate to a credit card reward program application, let alone to one of the novel type under consideration. Applicant's credit card rewards program is concerned with building loyalty to the card and *not* to (i) specific carriers or providers of travel passage, or even (ii) to a specific mode of travel, such as air travel. Indeed, conventional frequent flyer programs are also mentioned in the Background of the Invention section of the present specification to highlight the novel benefits of Applicant's invention (see ¶ [0008]).

Thus, the frequency award programs noted in Storey encourage use of the goods or services of specific providers of those goods or services (e.g., a particular airline (e.g., American Airlines), cruise line (e.g., Royal Caribbean), railway (e.g., Amtrak) or bus line (e.g., Greyhound)). Such frequency rewards programs are not at all concerned with encouraging -- and in fact do not encourage -- increased use of a particular credit card issuer's card which is not tied to a specific provider of goods or services as does Applicant's claimed invention (see, e.g., ¶ [0035] of the present published specification). Therefore, it is not surprising that Storey, in stark contrast to the embodiments of Applicant's invention as claimed in independent claims 1, 18, 33, 50 and 65, does not teach or suggest determining the travel distance associated with a qualifying transaction, which includes travel on any of a set of multiple modes of travel) and basing credit card rewards thereon.

The foregoing deficiencies of Hardesty and Storey are also true of both the *www.frugalmarketing.com* article and PNC Bank piece cited by the Examiner in combination with Hardesty and Storey. The *www.frugalmarketing.com* article merely (and very generally) describes a basic supermarket loyalty program for rewarding loyal customers with various rewards which can include frequent flyer miles. The PNC Bank piece merely (and very generally) describes PNC Bank's reporting service options for merchants. Neither of these references teaches or suggests determining the travel distance associated with a travel ticket (on any of multiple modes of travel) or the like purchased using a credit card (let alone using Level 3 data) and basing rewards thereon as in the claimed invention.

Notwithstanding the severe deficiencies of the PNC Bank piece as a reference on the merits, Applicant reserves the right to submit a declaration under 37 CFR 1.131 to remove the PNC Bank piece as a reference based on (i) reduction to practice of the present invention before the December 16, 2002 date of the reference, or (ii) conception of the present invention before the

effective date of the reference coupled with due diligence from prior to the effective date to a subsequent reduction to practice or to the filing of the present patent application.

In view of the foregoing, Applicant respectfully submits that the references cited by the Examiner, whether taken alone or combined, do not yield, teach or suggest Applicant's invention as claimed in independent claims 1, 18, 33, 50 and 65. Notice to the effect that these claims are patentable over the cited references is earnestly solicited.

Pending claims 2, 4-18, 19-21, 23-32, 34, 36-43, 46-48, 53, 55-64 and 66-69 variously depend from independent claims 1, 18, 33, 50 and 65 and are patentable over Hardesty, Storey, the *www.frugalmarketing.com* article, and the PNC Bank piece for the same reasons that these independent claims are patentable over the cited references. The dependent claims are also allowable for the additional features recited therein, and notice to this effect is also respectfully requested.

The rejections of dependent claims 5, 7, 9, 14, 24, 26, 28, 31, 37, 39, 41, 46, 56, 58, 60 and 63 are specifically traversed. These claims more particularly highlight various features of Applicant's invention discussed above in connection with (and covered by) the independent claims which patentably distinguish over conventional frequency award programs and loyalty programs of the type cited by the Examiner – namely, that the inventive credit card rewards program encourages increased use of the credit card issuer's card because the rewards are not tied to any specific provider of goods or services, or even any particular mode of travel, and that Level 3 Data can be used to calculate miles traveled on which redeemable benefits are based.

On the basis of the foregoing amendments and these remarks, Applicant respectfully submits that this application is in form for immediate allowance. Notice to this effect is earnestly solicited. The Examiner is invited to contact Applicant's undersigned attorney at the telephone number set forth below if it will advance the prosecution of this case.

No additional fees are believed to be due with this Response. Please charge any fee deficiency and credit any overpayment to Deposit Account No. 50-0540.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read 'Aaron S. Haleva', written over a horizontal line.

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